

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION NO: 24682 of 2007

Dated: 22-11-2007

Between:

Smt. Tahera Habeeb

..... **PETIT**

AND

Greater Hyderabad Municipal Corporation,
Rep., by its Commissioner,
Tank Bund, Hyderabad and 2 others.

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HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION No. 24682 of 2007
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ORDER:

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This writ petition is filed for a writ of mandamus declaring the action of respondents 1 and 2 in seeking to dispossess the petitioner from her Mulgi bearing No.22-6-1072 situated at Kali Kaman, Hyderabad as illegal and arbitrary.

The petitioner's husband was allegedly the tenant in respect of premises bearing No.22-6-1072 of respondent No.3 situated at Kali Kaman, Hyderabad on monthly rent of Rs.250/- and the said tenancy was covered by a rental agreement dated 11-09-1978. The petitioner claims that after the death of her husband she took over the business being run in the name and style of "Akbar Kham Jewellers". In the affidavit the petitioner averred that when respondents 1 and 2 sought to widen the road from Gulzar Houz to Charkaman road, respondent No.3 with a mala fide intention gave her consent to respondents 1 and 2 and on coming to know about the same, the petitioner made representation on 17-11-2007.

The grievance of the petitioner is that though she is the tenant having legal right to occupy the premises, respondents 1 and 2 are seeking to proceed under Section 146 of the Hyderabad Municipal Corporation Act, 1955 (for short "the Act") based on the purported consent of respondent No.3. She therefore, pleaded that unless respondents 1 and 2 initiate proceedings under Section 147 of the Act, they cannot take forcible possession of the land for the purpose of road widening.

Heard Sri Mohd.Zia-UI-Haque, learned counsel for the petitioner and Sri Sashidharan Nair, learned counsel representing Sri R.Ramhandra Reddy, learned standing counsel for Greater Municipal Corporation, Hyderabad.

As regards right of the respondents-Municipal Corporation to acquire the land without the consent of the tenant in occupation of the premises, the same is no longer *res integra* in view of the Division Bench Judgment of this Court in

USHODAYA PUBLICATIONS, HYDERABAD V. COMMISSIONER,

MUNICIPAL CORPORATION OF HYDERABAD^[1]. It was held therein that the tenant having a statutory right to occupy the leased premises, the Corporation cannot forcibly dispossesses him/her based on the consent given by the landlord under Section 146 of the Act. Therefore, respondents 1 and 2 cannot dispossess the petitioner either without obtaining her consent or invoking the provisions of Section 147 of the Act for acquiring the land.

In view of the above, the writ petition is disposed of with a direction to respondents 1 and 2 not to dispossess the petitioner, if she is still continuing in occupation of the premises as a tenant and subject to her producing evidence to the effect that she is a lawful tenant of respondent No.3, without either her consent or following the procedure prescribed under Section 147 of the Act. No costs.

C.V.NAGARJUNA REDDY,J

Date: 22-11-2007

Note: Issue C.C. by Monday.

B/o
KLP

^[1] 2001(3) ALD 173 (DB)